

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Pagnamenta	Team: Squad #2	CCRB Case #: 202101743	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/11/2021 10:55 PM	Location of Incident: Buffalo Avenue and Atlantic Avenue	Precinct: 77	18 Mo. SOL 8/11/2022	EO SOL 8/11/2022	
Date/Time CV Reported Wed, 03/17/2021 10:09 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 03/17/2021 10:09 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Austin Slamowitz	15865	962109	077 PCT
2. POF Tiffany Martinez	02382	965310	077 PCT
3. SGT John Nicolosi	03027	950949	077 PCT
4. POM Michael Maynard	05449	958911	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Samantha Love	02842	966677	077 PCT
2. POM Christophe Porter	02908	961115	077 PCT
3. POM Ashley Griffith	19021	958654	077 PCT
4. POM Kevin Hernandez	07459	966620	077 PCT
5. POM Joshua Stembridge	01983	961329	077 PCT
6. POM Morcos Ayoub	01690	953646	077 PCT
7. POM Kenneth Anderson	20151	950001	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Tiffany Martinez	Force: Police Officer Tiffany Martinez pointed her gun at § 87(2)(b)	
B.POM Michael Maynard	Force: Police Officer Michael Maynard pointed his gun at § 87(2)(b)	
C.POM Austin Slamowitz	Force: Police Officer Austin Slamowitz pointed his gun at § 87(2)(b)	
D.SGT John Nicolosi	Force: Sergeant John Nicolosi pointed his gun at § 87(2)(b)	
E.POM Austin Slamowitz	Force: Police Officer Austin Slamowitz used physical force against § 87(2)(b)	
F.POM Austin Slamowitz	Abuse: Police Officer Austin Slamowitz refused to provide his name to § 87(2)(b)	
G.POM Austin Slamowitz	Abuse: Police Officer Austin Slamowitz refused to provide his shield number to § 87(2)(b)	
H.POF Tiffany Martinez	Discourtesy: Police Officer Tiffany Martinez spoke discourteously to § 87(2)(b)	
I.SGT John Nicolosi	Discourtesy: Sergeant John Nicolosi spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM Michael Maynard	Discourtesy: Police Officer Michael Maynard spoke discourteously to § 87(2)(b)	
K.SGT John Nicolosi	Abuse: Sergeant John Nicolosi searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	

Case Summary

On March 17th, 2021, § 87(2)(b) filed the following complaint via the CCRB's Call Processing System on behalf of herself and her friend § 87(2)(b). This case was initially assigned to Investigator Kenneth Shelton. It was reassigned to Investigator Pagnamenta on May 24th, 2021, upon Investigator Shelton's resignation from the Agency.

At approximately 10:57 p.m. on February 11th, 2021, § 87(2)(b) was driving on Atlantic Avenue in Brooklyn—with § 87(2)(b) in the front passenger seat—when an unmarked police vehicle pulled up and signaled him to pull over. § 87(2)(b) fled by turning right onto Atlantic Avenue and accelerating for approximately one block until his car struck a taxi on Atlantic Avenue and Buffalo Avenue. Police Officer Austin Slamowitz, Police Officer Michael Maynard, and Police Officer Tiffany Martinez of the 77th Precinct approached § 87(2)(b) and § 87(2)(b) car with their guns pointed (**Allegation A-C: Gun Pointed**, § 87(2)(g)). Sergeant John Nicolosi allegedly also approached with his gun pointed (**Allegation D: Gun Pointed**, § 87(2)(g)). As Police Officer Martinez approached the driver's side of the vehicle with her gun pointed, she shouted, "Don't fucking move," (**Allegation E: Discourtesy**, § 87(2)(g)) and ordered § 87(2)(b) out of the car. As Police Officer Martinez and Police Officer Maynard handcuffed § 87(2)(b) she repeated, "Don't fucking move" (**within Allegation E**). Police Officer Slamowitz approached the passenger side of the vehicle. After § 87(2)(b) opened the car door, Police Officer Slamowitz allegedly grabbed her shoulder and pulled her out of her seat (**Allegation F: Physical Force**, § 87(2)(g)). As § 87(2)(b) exited the car, she allegedly asked Police Officer Slamowitz for his name and shield number and he did not provide them (**Allegation G: Refusal to Provide Name**, § 87(2)(g)) (**Allegation H: Refusal to Provide Shield Number**, § 87(2)(g)).

At the rear of the car, as Sergeant Nicolosi frisked and searched § 87(2)(b) asked him, "Why you bugging boy?" Sergeant Nicolosi replied, "I go where the fuck I want" (**Allegation I: Discourtesy**, § 87(2)(g)). Police Officer Maynard and Police Officer Martinez told § 87(2)(b) and § 87(2)(b) that they were both going back to the stationhouse. When § 87(2)(b) asked why, Police Officer Maynard replied, "You are both coming back, you dumbass. It's some dumbass shit you just did." § 87(2)(b) asked, "What I do?" Police Officer Maynard replied, "What you do? Stupid." After Police Officer Maynard asked § 87(2)(b) why he "ran," and § 87(2)(b) replied that he did not have his license, Police Officer Maynard told him, "You side swiped a car because you don't have a license? How dumb are you?" (**Allegation J: Discourtesy**, § 87(2)(g)). Police Officer Martinez then told § 87(2)(b) "You just took off for something stupid, and you want to talk shit" (**within Allegation E**).

Sergeant Nicolosi searched the car (**Allegation K: Vehicle Search**, § 87(2)(g)), and recovered a marijuana cigarette, which was vouchered by Police Officer Slamowitz (**Board Review 01**). § 87(2)(b) and § 87(2)(b) were then brought back to the 77th Precinct stationhouse. § 87(2)(b) was charged with § 87(2)(b).
§ 87(2)(b) (**Board Review 01**), while § 87(2)(b) was released with a summons for § 87(2)(b) (**Board Review 02**).

Body-worn camera (BWC) footage of the incident was obtained from the BWCs of Police Officer Martinez, attached to IA#106 (**Board Review 03**), Police Officer Maynard, attached to IA#107 (**Board Review 04**), Police Officer Slamowitz, attached to IA#108 (**Board Review 05**), and Sergeant Nicolosi, attached to IA#109 (**Board Review 06**). BWC videos were also obtained from Police Officer Samantha Love, Police Officer Christopher Porter, Police Officer Ashley Griffith, Police Officer Kevin Hernandez, Police Officer Joshua Stembridge, Police Officer Morcos Ayoub,

Police Officer Kenneth Anderson, and are attached in IA #51 (**Board Review 07**) and summarized in IA #62 (**Board Review 08**).

Findings and Recommendations

Allegation (A) Police Officer Tiffany Martinez pointed her gun at § 87(2)(b)

Allegation (B) Police Officer Michael Maynard pointed his gun at § 87(2)(b)

Allegation (C) Police Officer Austin Slamowitz pointed his gun at § 87(2)(b)

Allegation (D) Sergeant John Nicolosi pointed his gun at § 87(2)(b)

§ 87(2)(b) was interviewed by telephone on June 4th, 2021 (**Board Review 09**). The investigation was unable to obtain a statement from § 87(2)(b). Police Officer Maynard and Police Officer Martinez were interviewed at the CCRB on September 8th, 2021 (**Board Review 10 and 11**). Police Officer Slamowitz and Sergeant Nicolosi were interviewed at the CCRB on September 10th, 2021 (**Board Review 12 and 13**).

It is undisputed that § 87(2)(b) did not pull over his vehicle when officers first attempted to pull it over, and that he only stopped when his vehicle struck a taxi at Atlantic and Buffalo Avenue. It is further undisputed that Police Officer Maynard and Police Officer Martinez approached the driver's side of § 87(2)(b) car with their guns pointed towards the side window and the windshield and that Police Officer Slamowitz approached the passenger side with his gun pointed towards the side window.

§ 87(2)(b) stated that immediately after § 87(2)(b) drove away from the McDonald's on Atlantic Avenue and Ralph Avenue, an unmarked police vehicle pulled up to their car, and officers inside rolled down their windows and told § 87(2)(b) to pull over. § 87(2)(b) car windows were open at the time.) § 87(2)(b) believed that § 87(2)(b) was obeying the speed limit and had not violated any traffic laws when the officers attempted to pull him over. After the officers ordered § 87(2)(b) to pull over, he turned right on Atlantic Avenue and accelerated for approximately one block until he crashed into a green NYC taxi in the vicinity of Atlantic Avenue and Buffalo Avenue. The unmarked police vehicle pulled up at the site of the collision, and Police Officer Slamowitz, Sergeant Nicolosi, Police Officer Maynard, and Police Officer Martinez all exited their vehicle holding guns in their extended arms and ran towards § 87(2)(b) car. Police Officer Slamowitz went to the passenger side of the vehicle and tapped § 87(2)(b) window with the side of his gun, while Sergeant Nicolosi, Police Officer Maynard, and Police Officer Martinez went to the driver's side, and Police Officer Maynard tapped § 87(2)(b) window with his gun. The four officers put their guns back into their holsters once § 87(2)(b) and § 87(2)(b) opened their doors.

The four officers' statements were consistent in that they stated that they first observed § 87(2)(b) drive northbound on Rochester Avenue at a "high rate" of speed. (Police Officer Maynard noted the speed limit was 25 miles per hour and estimated that § 87(2)(b) was driving at approximately 40 to 50 miles per hour.) Approximately 30 seconds after first observing § 87(2)(b) vehicle speeding, the unmarked police car made a U-Turn with the purpose of conducting a car stop. At a red light at the intersection of Rochester and Atlantic Avenue, the officers activated lights and sirens with the intention of pulling over § 87(2)(b) vehicle.

Police Officer Martinez and Police Officer Slamowitz stated that at that point in the incident, all four officers exited the police car to approach § 87(2)(b) vehicle, but that when he saw the officers approach, he "took off" and "disobeyed" the red light by making a right turn, "fle[eing]" into "oncoming" traffic. The officers followed § 87(2)(b) eastbound on Atlantic Avenue and observed

§ 87(2)(b) sideswipe a parked taxicab on Atlantic Avenue. § 87(2)(b) car then got “stuck” in traffic, and all four officers exited their vehicle.

All four officers stated that Police Officer Slamowitz and Sergeant Nicolosi approached the passenger’s side of the vehicle, while Police Officer Maynard and Police Officer Martinez approached the driver’s side. Police Officer Slamowitz stated that he was the first officer to approach the passenger side with his firearm “out” and pointed it towards § 87(2)(b) vehicle since at that point in the incident he did not know who was in the car or how many people were in it. When the Investigator asked Police Officer Slamowitz why he had his firearm out, Police Officer Slamowitz replied for “officer safety,” as he described the situation as “evolving quickly.” Upon approaching the passenger side of the vehicle, Police Officer Slamowitz saw there was only one passenger in the car. Once Police Officer Slamowitz saw § 87(2)(b) hands and “felt” like he was “safe,” he holstered his firearm. (Police Officer Slamowitz estimated his firearm was out of its holster for approximately five seconds.) During the CCRB Interview, when the Investigator asked Sergeant Nicolosi if he had drawn his firearm, he replied that he had not and that his gun had remained in the holster throughout the incident.

Police Officer Maynard and Police Officer Martinez § 87(2)(g) explained that because § 87(2)(b) could have used his vehicle as a “weapon,” they withdrew their firearms when they exited the police car for their “safety.” At that point in the incident, Police Officer Maynard and Police Officer Martinez explained that § 87(2)(b) could “possibly” have “used” the vehicle and put it in reverse to try and “strike” the officers or other pedestrians present. Police Officer Martinez stated that because § 87(2)(b) could have caused “serious physical injury” to herself and others present on scene, she opened the driver’s side door, grabbed § 87(2)(b) arm, and ordered him to step out of the vehicle. Police Officer Maynard further stated that he walked towards the front of the vehicle and aimed his gun towards the vehicle’s windshield. After § 87(2)(b) exited the vehicle, Police Officer Martinez and Police Officer Maynard saw there was “no threat,” and put the guns back into their holsters.

At runtime 00:51, Police Officer Maynard’s BWC video 2021-02-11_2252 (**Board Review 04**) captures Police Officer Martinez approaching the driver’s side of the car with her gun pointed towards the side window, and Police Officer Maynard’s gun pointed towards the car’s windshield. Police Officer Martinez points her gun away from § 87(2)(b) as she opens his car door with her other hand. At 00:58, Police Officer Maynard keeps pointing his gun towards the windshield and then towards the driver’s side, as Police Officer Martinez holsters her gun and unbuckles § 87(2)(b) seatbelt and grabs his arm to pull him out of the car. At 00:51, Police Officer Martinez’s BWC (**Board Review 03**) shows Police Officer Slamowitz run towards the passenger side with his gun extended in his hands.

Sergeant Nicolosi’s BWC video 2021-02-11_2252 (**Board Review 06**) begins with Police Officer Slamowitz positioned in front of him, as Police Officer Slamowitz approaches the vehicle’s passenger side. The video does not capture Sergeant Nicolosi drawing or pointing his gun at any point during the incident. Because Police Officer Slamowitz’s BWC (**Board Review 05**) begins as he leans towards the passenger seat, it does not capture his approach to the vehicle. Moreover, because Police Officer Slamowitz was the first officer to arrive on the passenger side, his BWC does not capture Sergeant Nicolosi’s initial approach to the vehicle.

NYPD Patrol Guide Procedure 221-01 (**Board Review 14**) indicates that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. It notes

that an officer's decision to draw or display a firearm must be based on articulable belief that a potential threat of serious physical injury is imminent. The officer must secure his gun once the threat no longer exists.

People v. Livigni, 88 A.D.2d. 386 (1982) (Board Review 15) states that police officers may draw and point their guns as a precautionary measure and safety response.

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Police Officer Austin Slamowitz used physical force against § 87(2)(b)

Allegation (F) Police Officer Austin Slamowitz refused to provide his name to § 87(2)(b)

§ 87(2)(b)

Allegation (G) Police Officer Austin Slamowitz refused to provide his shield number to § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) stated that after opening her car door and unfastening her seatbelt, Police Officer Slamowitz grabbed her left shoulder and pulled her out of the car. As § 87(2)(b) exited the passenger seat, she asked Police Officer Slamowitz for his name and shield number. Instead of replying to § 87(2)(b) request, Police Officer Slamowitz asked her why she had "run" away from the officers. § 87(2)(b) told Police Officer Slamowitz that she was not the driver and she did not know what was going on.

Police Officer Slamowitz stated he opened the passenger side door and ordered § 87(2)(b) to step out of the car. Police Officer Slamowitz believed § 87(2)(b) had boxes on her lap, and that after he "moved" them from her lap, she stepped out of the vehicle. Police Officer Slamowitz denied making any physical contact with § 87(2)(b) as she exited the vehicle and stated that he did not grab and pull her. Police Officer Slamowitz further stated that § 87(2)(b) did not ask him for any information when he first approached the vehicle and denied that she had asked for his name and shield number.

Police Officer Martinez and Police Officer Maynard did not hear § 87(2)(b) request Police Officer Slamowitz's information. Sergeant Nicolosi did not recall § 87(2)(b) requesting Police Officer Slamowitz's name or shield number.

As Police Officer Slamowitz's BWC video 2021-02-11_2253 (**Board Review 05**) begins, the car door on the passenger side is already open, and Police Officer Slamowitz reaches towards § 87(2)(b) as she sits in the passenger seat and removes a box from her lap. After § 87(2)(b) exits the car by herself, Police Officer Slamowitz grabs § 87(2)(b) arm and extends it over her

body and pats her down. The sequence of events described above occurred in the first eight seconds of the video. However, because the audio does not begin until the 1:00 mark, the alleged verbal interaction between § 87(2)(b) and Police Officer Slamowitz was not captured by the audio.

§ 87(2)(g)

§ 87(2)(g)

Allegation (H) Police Officer Tiffany Martinez spoke discourteously to § 87(2)(b)

Allegation (I) Sergeant John Nicolosi spoke discourteously to § 87(2)(b)

Allegation (J) Police Officer Michael Maynard spoke discourteously to § 87(2)(b)

It is undisputed that Police Officer Martinez used profanities when she first approached the car, and that subsequently, at the rear of the vehicle, Sergeant Nicolosi, Police Officer Maynard, and Police Officer Martinez used profanities when speaking to § 87(2)(b)

At runtime 1:03, in Police Officer Martinez’s BWC video 2021-02-11_2251 (**Board Review 03**), as Police Officer Martinez approaches the driver’s side window with her gun pointed, and opens the car door, she tells § 87(2)(b) twice, “Don’t fucking move.” (During the CCRB Interview, Police Officer Martinez described her use of language as a “strong verbal command,” and stated there had been no “malicious intent.” Police Officer Martinez explained that she had been “verbally instructing” § 87(2)(b) not to move as it had been a “highly intense” situation. The officers had “just observed” § 87(2)(b) “hit” a car and “take-off” from them. Police Officer Martinez did not want § 87(2)(b) to “reach” for anything in the car that could have been a “threat” and “harm[ed]” the officers. Police Officer Martinez further explained that she did not want § 87(2)(b) to put his car in “reverse” or “drive,” and cause “serious injury” to the officers or to the other people present, so she instructed him not to move).

At 1:52 in Police Officer Maynard’s BWC video (**Board Review 04**), as Sergeant Nicolosi frisks and searches § 87(2)(b) at the back of the car, § 87(2)(b) says, “Why you buggin’ boy?” and Sergeant Nicolosi replies, “I go where the fuck I want.” (During his CCRB Interview, Sergeant Nicolosi did not recall why he had used the word “fuck” when speaking to § 87(2)(b). When the Investigator asked Sergeant Nicolosi what he had been doing at that point, Sergeant Nicolosi replied he had been frisking § 87(2)(b). When the Investigator asked him if there was anything else that he remembered about this specific exchange, Sergeant Nicolosi replied there was not).

At 2:30 in Police Officer Maynard’s BWC, after § 87(2)(b) asks Police Officer Maynard why § 87(2)(b) is coming back to the stationhouse, Police Officer Maynard replies, “You are both coming back, you dumbass. Some dumbass shit you just did.” (During his CCRB interview, when the Investigator asked why he had called § 87(2)(b) a “dumbass,” Police Officer Maynard

explained it had been a “heighten[ened] situation.”) At 2:36, when § 87(2)(b) asks, “What I do?” Police Officer Maynard replies, “Yeah. What did you do? Stupid.” At 2:55, after § 87(2)(b) tells Police Officer Maynard that he did not stop when he was first pulled over because he did not have a license, Police Officer Maynard replies, “You side-swiped a car because you didn’t have a license? How dumb are you?” (When the Investigator asked Police Officer Maynard why he called § 87(2)(b) “dumb,” he explained that § 87(2)(b) had “conduct[ed]” himself “very aggressive[ly]” for not having his license, disregarding other people’s “safety,” including the officers’).

At 3:18, in Police Officer Martinez’s BWC video (**Board Review 03**), after § 87(2)(b) tells Police Officer Maynard that he did not stop because he did not have a license, Police Officer Martinez tells § 87(2)(b) “You just took off for something stupid, and you want to talk shit.” (During her CCRB interview, Police Officer Martinez explained that § 87(2)(b) was “complaining” at that point and being “verbally aggressive” by asking the officers why they had “stopped him,” and why they weren’t letting § 87(2)(b) go. Police Officer Martinez was explaining to § 87(2)(b) that taking off from the “cops” for not having his license was a “very stupid reason.” She clarified that she had not been calling § 87(2)(b) stupid, but was describing his “course of actions.” Police Officer Martinez further explained that “shit” was another word for “talking back,” and was not “malicious.”)

According to Patrol Guide Procedure 200-02, the NYPD pledges to “value human life, respect the dignity of each individual and render our services with courtesy and respect” (**Board Review 16**).

According to DCT Case No. 2015-15012, officers are to behave professionally and respectfully towards members of the public and avoid the use of discourteous language; however, officers’ use of profanities during stressful street encounters do not constitute misconduct (**Board Review 17**).

§ 87(2)(g)

[REDACTED]

Allegation (K) Sergeant John Nicolosi searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that after § 87(2)(b) and § 87(2)(b) exited the vehicle, Sergeant Nicolosi searched it.

§ 87(2)(b) stated that she and § 87(2)(b) had smoked marijuana earlier that day and acknowledged that there was an odor of marijuana in the car at the time of the car stop. She was, however, not aware of there being any marijuana inside the car at the time of the car stop. After she and § 87(2)(b) exited the car, Police Officer Martinez and Police Officer Maynard searched the car’s front driver and passenger seats.

Sergeant Nicolosi stated that he searched the vehicle at the scene of the incident due to the odor of marijuana emanating from the vehicle. Sergeant Nicolosi searched the vehicle’s front and rear seats

and found a marijuana cigarette in the front area. Sergeant Nicolosi did not remember any other officers searching the vehicle at the scene of the incident and stated he was unable to determine on scene to whom the marijuana cigarette belonged. Sergeant Nicolosi decided to bring § 87(2)(b) back to the stationhouse after observing the marijuana cigarette in the vehicle.

Police Officer Slamowitz issued § 87(2)(b) a summons for “§ 87(2)(b)” that indicated that § 87(2)(b) was in possession of marijuana at the scene of the incident (**Board Review 02**). Moreover, Police Officer Slamowitz prepared invoice #§ 87(2) in relation to this incident noting that marijuana “packaged in rolling paper (vegetative)” had been recovered (**Board Review 18**).

At runtime 1:18 in Sergeant Nicolosi’s BWC footage (**Board Review 06**), Sergeant Nicolosi looks inside of § 87(2)(b) vehicle. After approximately 20 seconds, he says, “Just bring them in for the weed.” During the CCRB Interview, Sergeant Nicolosi stated he had been speaking to his “cops” at that point as he had observed marijuana in the vehicle. Sergeant Nicolosi confirmed that he made the decision to bring back both occupants to the stationhouse at that point in the incident.

In People v. Chestnut, 43 A.D.2d 260 (1974), the court held that the smell of marijuana smoke emanating from an automobile can be sufficient to provide police officers with probable cause to search an automobile and its occupants (**Board Review 19**).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to one other CCRB complaint and has been named a victim in one other allegation (**Board Review 20**).
 - § 87(2)(b)
- This is the first complaint to which § 87(2)(b) has been a party (**Board Review 21**).
- Sergeant John Nicolosi has been a member of service for ten years and has been a subject in 14 other CCRB complaints and 25 other allegations, none of which have been substantiated. § 87(2)(g)
- Police Officer Michael Maynard has been a member of service for six years and is a subject in two other CCRB complaints and four other allegations, none of which have been substantiated. § 87(2)(g)
- Police Officer Tiffany Martinez has been a member of service for three years and is a subject in four other CCRB complaints and 13 other allegations, none of which have been substantiated. § 87(2)(g)
- Police Officer Austin Slamowitz has been a member of service for five years and is a subject in four other CCRB complaints and 13 other allegations, of which two were substantiated in one case:
 - In case # 201702803, refusal to provide name and shield number allegations were substantiated against Police Officer Slamowitz. The NYPD imposed command

○ § 87(2)(g)

- § 87(2)(g)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- According to the New York City Office of the Comptroller, no Notice of Claim had been filed regarding this incident as of September 22nd, 2021 (**Board Review 24**).

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____